Rev. Rul. 73-546, 1973-2 C.B. 384

Private foundations; self-dealing; service fee for overdrawn checking account. The payment by a private foundation to a bank, a disqualified person, of a service fee for an overdrawn checking account in an amount equal to the actual cost of processing the overdraft does not result in an act of self-dealing under section 4941 of the Code.

Advice has been requested whether, under the circumstances described below, charging a service fee for an overdrawn checking account constitutes an act of self-dealing under section 4941 of the Internal Revenue Code of 1954.

A private foundation has a checking account in a banking institution which is a disqualified person with respect to the private foundation. The foundation overdrew the account. The banking institution did not charge interest on the amount overdrawn. It did, however, charge a service fee which was the actual expense of processing the amount overdrawn.

Section 4941(d)(2)(E) of the Code states that the payment of compensation by a private foundation to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purposes of the private foundation shall not result in self-dealing if the compensation is not excessive.

Section 53.4941(d)-2(c)(4) of the Foundation Excise Tax Regulations provides that, under section 4941(d)(2)(E) of the Code, the performance of certain general banking services for a private foundation by a bank which is a disqualified person, is not an act of self-dealing if the compensation paid by the foundation is not excessive. These general banking services include checking accounts, as long as the bank does not charge interest on amounts overdrawn.

The service fee is part of the compensation paid by the foundation to the bank for the maintenance of its checking account. As the service fee equals the actual expense of processing the amount overdrawn, it is not excessive.

Accordingly, the payment of a service fee under the circumstances described does not result in an act of self-dealing under section 4941 of the Code.